IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 990 OF 1999

FROM

WRIT PETITION NO. 973 OF 1999

S. KUMARS RETAILERS SERVICERS PVT.)
LTD., a Company incorporated under)
the Companies Act, 1956, having its)
Registered Office at "Niranjan", 99,)
Marine Drive, Mumbai 400 002 and)
establishment at S.Kumars House,)
Plot 60, Phase II, Street 14, Marol,)
Andheri (East), Mumbai 400 093.).. Appellant

Versus

1. MUMBAI GUMASTA UNION,)
a Trade Union registered under)
the Indian Trade Unions Act,)
having its office at 358-A,)
J. Shankarseth Road, Mumbai 400 002.)
2. MR. V.L. KAMBLE,)
Member, Industrial Court, Mumbai,)
having his office at Arun Chambers,)
7th floor, Tardeo, Mumbai 400 034.)
3. S. KUMARS SYNFABS LTD.)
4. MANMADE FABRICS SALES SERVICES)
PVT.LTD.,)

Respondent Nos. 3 and 4 both)
having their office at Avadh Bldg.,)
Shree Ram Miller Premises, G.K.Marg,)
Lower Parel, Mumbai 400 013.)
5. S. KUMARS TEXTILES LTD.,)
6. S. KUMAR ENTERPRISES (SYNFABS) LTD.)
7. DR.K.N. MODAK, Director,)
S. Kumars Retailers Services Pvt.Ltd.)
8. MR. VIKAS KASLIWAL, Director,)
Respondent Nos. 5 to 8 having)
their office at Niranjan Building,)
Marine Drive, Mumbai 400 002.)..Respondents

Mr. C.U.Singh with Ms.Gauri Deshpande i/b. Little & Co. for the appellant.
None for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 1st August, 2007.

P.C.

1. We have heard learned Counsel appearing for the appellant. None appears for the respondents.

2. This Appeal is directed against the order passed by the learned Single Judge dated 27th July, 1999 in

Writ Petition No.973 of 1999. That Writ Petition was filed by the petitioner challenging the order of the Industrial Court, Mumbai. The learned Single Judge rejected the petition in limine,however, directed the Labour Court to dispose of the matter within four months.

3. The relevant facts are that the petitioner transferred certain employees from Mumbai to Dewas by order dated 11.11.1997. Though there was no order made by any Court either cancelling or staying transfer order, according to the employer, the employees did not join at the place of transfer and, therefore, their services were terminated by order dated 26.11.1997. A complaint was filed against termination order before the Labour Court in December, 1997. It appears that a complaint was filed before the Industrial Court which was registered as Complaint (ULP) No.666 of 1997 challenging the transfer order. In that complaint, an application for interim relief was taken out. That application was decided by order dated 24.2.1998. The Industrial Court, Mumbai, prima facie, found that the employer was not justified in issuing transfer order. However, since the date on which the order was made by the Industrial Court, the employees were not in service, their services having been terminated did not make any interim order in relation to the transfer of the

employees. It appears that thereafter the Labour Court took up the application for interim relief filed in relation to the termination order. That application was decided by the Labour Court by an order dated 17.9.1998. The Labour Court declined to make any interim order noting that the termination has already taken effect and making an interim order obviously would amount to granting final relief by the interim order.

4. Against that order, a revision was preferred before the Industrial Court. That revision has been decided by the Industrial Court by order dated 8th March, 1999. The Industrial Court set aside the order made by the Labour Court and granted interim relief which was in the nature of a direction issued to the employer to reinstate the employees at the station where they were posted before their transfer. It is this order which was challenged before the learned Single Judge in the above referred Writ Petition, but the petition was dismissed in limine by the learned Single Judge.

5. In this appeal, an interim order has been made in favour of the appellant, with the result, the order of the Industrial Court has never taken effect.

6. Perusal of the order of the Industrial Court

shows that it has decided to grant drastic interim order in favour of the employees because, according to the Industrial Court, it has held that the transfer orders were invalid and amounted to engagement in unfair labour practice by the employer. The employer has not challenged that order and, therefore, relying on the observations in that order, drastic interim relief was granted in favour of the employer. Now it is clear from the perusal of the order passed by the Industrial Court in relation to the complaint which related to the transfer order that the Industrial Court did not make any order either staying or setting aside transfer orders or cancelling them because the employees on that date were not in the employment. Therefore, there was no question of the employer challenging that order merely for challenging the observations that were made by the Industrial Court. Thus, the Industrial Court has committed, in our opinion, an error in granting interim order of such a drastic nature on a wrong premise that it has held transfer orders to be illegal and that finding has been accepted by the employer. One more aspect, in our opinion, which requires to be considered is that though the interim order was made by the Industrial Court on 8th March, 1999, as a result of the interim order passed in this Appeal, that order never came into force and has remained stayed.

7. Taking overall view of the matter, in our opinion, following order would meet the ends of justice :-

(i) The order of the Industrial Court dated 8th March, 1999 is set aside.

(ii) The Labour Court is directed to decide Complaint (ULP) No.666 of 1997 as expeditiously as possible. It may be pointed out here that the Labour Court was directed to decide that complaint by the learned Single Judge within a period of four months from 27th July, 1999 and we have been informed that the complaint is still pending. In our opinion, therefore, the Labour Court should pay special attention and dispose of the complaint as expeditiously as possible. Similarly, the complaint filed in relation to the transfer orders, being Complaint (ULP) No.1089 of 1997 is pending before the Industrial Court and we have been informed that this complaint has not been disposed of by the Industrial Court. Therefore, we direct the Industrial Court to take up that complaint for decision and decide it finally as expeditiously as possible.

The Appeal is disposed of.

--

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)